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RETURN OR RESTITUTION OF CULTURAL PROPERTY TO THE COUNTRIES OF ORIGIN

Report of the Secretary-General

1. The question of restitution of works of art to countries that are victims of appropriation was first considered by the General Assembly at its twenty-eighth session, in 1973, at the request of Zaire. 1/ Its consideration thereafter in the Assembly is summarized in the report of the Secretary-General submitted to the Assembly at its forty-sixth session (A/46/497). By its resolution 46/10 of 22 October 1991, the Assembly, inter alia, requested the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO), to submit to the Assembly at its forty-eighth session a report on the implementation of the resolution.

2. The report sent to the Secretary-General by the Director-General of UNESCO (see annex), is submitted pursuant to that request.

Notes

1/ Official Records of the General Assembly, Twenty-eighth Session, Annexes, agenda item 110, document A/9199.

ANNEX

Report of the Director-General of the United Nations Educational, Scientific and Cultural Organization on the action taken by the organization on the return or restitution of cultural property to the countries of origin

1. Since the previous report by the Director-General, submitted to the General Assembly at its forty-sixth session (A/46/497), the United Nations Educational, Scientific and Cultural Organization (UNESCO) has continued to promote the return or restitution of cultural property to the countries of origin. It has particularly sought to apply the recommendations of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its seventh session, which was held at Athens, Greece, from 22 to 25 April 1991. These recommendations were based on progress achieved since the first session of the Committee in 1980. The present report describes measures taken since the seventh session of the Intergovernmental Committee. The eighth session of the Committee a/ was to take place in Guatemala from 7 to 10 June 1993. Owing to the situation in Guatemala at that time, it had to be postponed and will be held in early 1994.

I. PROMOTION OF BILATERAL NEGOTIATIONS FOR THE RETURN OR RESTITUTION OF CULTURAL PROPERTY

2. Having considered once again the question of the Parthenon Marbles, the Committee, at its last session, recommended that the secretariat, with the advice and assistance of the International Council of Museums (ICOM), seek the opinion of experts to study the plans of the new Acropolis Museum in Athens and advise the Committee as to where the Parthenon Marbles could best be located. At the request of the secretariat, ICOM is to arrange the visit of an expert to study the plans before reporting back to the Committee. In the meantime, the Greek authorities have informed the secretariat of a contract being signed between the Greek Minister of Culture and Italian architects for the construction of the new Acropolis Museum. The final construction plan will be completed approximately by August 1993.

3. The claim of Turkey for a sphinx from Boguskoy, now in Berlin, initially addressed to the German Democratic Republic, is now subject to discussion between Turkey and the Federal Republic of Germany, following the unification of the two German States.

4. In April 1991, the Union of Myanmar sought the secretariat's help in retrieving 11 golden royal statues said to be held in the United Kingdom of Great Britain and Northern Ireland. UNESCO suggested that the Myanmar authorities first initiate bilateral negotiations with the country in which the objects had since been located, in accordance with the Guidelines for Use of the Standard Form concerning Requests for Return or Restitution.

5. On 7 May 1991, Zambia requested information from the secretariat about the return of the "Broken Hill" skull to Zambia. The Zambian authorities were informed in September 1991 of the necessity to enter at first into bilateral negotiations with the United Kingdom where the skull is said to be located.

6. The secretariat has received an increasing number of reports of illicitly trafficked cultural objects, which have been returned without recourse to action by the secretariat. Cooperation between the International Criminal Police Organization (INTERPOL) and the German authorities led to the return to the Libyan Department of Antiquities in Tripoli on 7 July 1992 of a fifth century B.C. marble head of a young man that had been stolen from Cyrene on 28 February 1990. On 14 April 1992, Peru informed the secretariat that a ceremonial blanket (Manto) dating from 500 B.C., stolen from the National Museum of Anthropology and Archaeology in February 1992 has been located by the Peruvian authorities. In March 1992, Panama informed the secretariat that the first Panamanian flag, stolen in December 1989 from the "Museo del Historia" in Panama, was returned on 7 January 1992 and will be re-exhibited. A number of Greco-Roman and Corinthian pieces of pottery have been returned to the Museum of Ancient Corinth, in Greece, from which they were stolen. In November 1991, paintings stolen from Ernst-Moritz-Arndt University in the former German Democratic Republic, between 10 and 11 April 1991, were found after action by West Berlin's repression of crime unit.

II. INTERNATIONAL COOPERATION

7. Since the Committee's seventh session, a number of measures have been taken and various activities have taken place to increase international cooperation to promote the aims of the Committee.

8. In response to 26 C/Resolution 3.9, adopted by the General Conference of UNESCO at its twenty-sixth session in November 1991, the Director-General submitted to the Executive Board, at its one hundred and fortieth session in October 1992, a report on the reinforcement of the action taken by UNESCO for the protection of the world cultural and natural heritage. This study included consideration of the workings of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 1970), b/ and concluded that, rather than a revision of the Convention, efforts should be made to reinforce its application by publication of legislative texts, intensification of training courses, technical assistance to States with problems of illicit traffic, regulations for the art trade and further efforts to encourage ratification or acceptance by non-party States. The study also described the work of the Committee.

9. The above-mentioned report also dealt with the Convention concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972), the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954), and the 10 UNESCO recommendations for the protection of the cultural heritage. After discussion, the Executive Board considered that further time was necessary for consideration of the document and that a decision would be taken at the one hundred and forty-first session of the Executive Board in May 1993.

10. In pursuance of its obligations under the 1970 Convention and in implementation of the procedures set up under the United States Convention on Cultural Property Implementation Act of 1983, the United States of America extended their emergency import restrictions on cultural artefacts from El Salvador for an additional three years. A similar emergency import ban was imposed in 1991 on Mayan artefacts originating in the Peten region of Guatemala.

11. The assistance of the secretariat has been invoked for the return of cultural objects taken during a time of armed conflict. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, to which 82 States are parties, requires occupying Powers to assist local authorities in the preservation of cultural property. The Protocol to the Convention, to which 68 States are parties, provides that occupying Powers undertake to prevent exportation during armed conflict of cultural property from the occupied territory. The obligations of the Convention apply also in conflicts not of an international character. Yugoslavia became party to both Convention and Protocol in 1956. Croatian authorities have complained to UNESCO of the unauthorized removal of the contents of the museum of Vukovar by occupying forces.

12. On the outbreak of conflict in the Gulf, 12 of the 14 States involved, including Iraq and Kuwait, were party to the 1954 Convention. Both these States were also party to the 1970 Convention, which provides that export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of the country by a foreign Power shall be regarded as illicit. Kuwait notified UNESCO of the removal from its territory of considerable numbers of cultural objects. In accordance with Security Council resolution 686 (1991) of 2 March 1991, the return of all property taken by Iraq from Kuwait was to be supervised by the United Nations. Under the supervision of the United Nations Return of Property Unit (UNROP), 25,082 museum items from the Dar-Al-Athar Al-Islamiyya and Kuwait National Museum, including objects from Failaka Island, were handed over in Baghdad to the Kuwaiti representatives by Iraq during the period 14 September to 20 October 1991. Kuwait has notified UNESCO that numerous items are still missing and details have been passed to the United Nations Coordinator for the Return of Property from Iraq to Kuwait to enable further action to be taken.

13. Iraq also notified loss of cultural objects during the period of military intervention and civil disturbance immediately following. On 29 October 1991, the Iraqi delegation handed over to UNESCO four volumes, each of several hundred pages, containing a record of thousands of cultural objects lost and stolen from Iraqi museums. UNESCO provided copies of these volumes to ICOM, the International Foundation for Art Research (IFAR), INTERPOL, to the Metropolitan Museum of Art in New York, and to Sotheby's, London, for distribution to dealers and buyers in the London market. Although most of the items bore museum registration numbers, photographs were not available and Sotheby's have replied that, if the registration numbers have been removed, most of the descriptions are too general to enable identification of the objects. This situation proves once again that it is essential to have detailed documentation and photographs to make possible recovery of stolen or illegally exported cultural objects circulating in the international market.

14. The secretariat has continued to participate in the negotiations on the UNIDROIT preliminary draft Convention on Stolen or Illegally Exported Cultural Objects. Since the last meeting of this Committee, three meetings of experts nominated by their Governments have been held in Rome, and another will be held in October 1993. An up-to-date report will be given orally to the meeting.

15. The Commonwealth of 49 English-speaking countries has been considering a scheme for an operation to prevent illicit traffic for its member States since 1986. The scheme, as at present discussed, would be consistent both with the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and with the draft UNIDROIT scheme. It will be discussed again at a meeting of Law Ministers of the Commonwealth in Mauritius in 1993.

16. The European Community reached agreement on a Directive on Illegally Exported Cultural Objects within the European Community. Some formal steps have still to be taken before it is in operation. Notable features of the Directive are the limitation of claims to "national treasures", some delimited by monetary criteria, and the need to lodge claims within one year. This Directive is significant for the negotiations on the UNIDROIT Convention, as many European States were participating in both sets of negotiations. The European Community Directive preserves remedies given in national legal systems for stolen cultural objects.

17. Members of the Secretariat of UNESCO participated in meetings of the Customs Cooperation Council, held at Brussels in June 1991 and on 9 March 1992, where the importance of customs cooperation in the prevention of illicit traffic was emphasized. It was pointed out that the Nairobi Agreement on Customs Cooperation of 1971 provides specifically for the cooperation of custom services in the prevention of illicit traffic. A member of the Customs Cooperation Council took part in a UNESCO regional workshop on measures against illicit traffic in cultural property, which took place at Jomtien, Thailand, from 24 to 28 February 1992, and a member of the United States Customs Service based at Bangkok took part in the Cambodian National Seminar on the same topic organized by UNESCO at Phnom Penh in July 1992.

18. As a result of the cooperation between UNESCO and the Commission on Crime Prevention and Criminal Justice (United Nations Office at Vienna), in the field of crimes against cultural property a meeting was held at the invitation of Italy at Courmayeur, Mont Blanc, Aosta Valley, from 25 to 27 June 1992. Organized by a non-governmental organization, the International Scientific and Professional Advisory Council of the United Nations for Crime Prevention and Criminal Justice, this international Workshop on the Protection of Artistic and Cultural Patrimony was held with the cooperation of the United Nations Crime Prevention and Criminal Justice Branch and the Division of Physical Heritage of UNESCO. The workshop was intended to formulate recommendations aimed at implementing a resolution on the model treaty for the prevention of crimes against movable cultural property and a resolution on the use of automated information exchange to combat crimes against movable cultural property, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in 1990. Representatives from Albania, Canada, China, Czechoslovakia, France, Greece, Italy, Mexico, Nigeria, Peru, the Russian Federation, Senegal, Spain, Thailand and the United Kingdom attended.

Also present were INTERPOL and ICOM. The participants adopted two recommendations: one on national and international action against the illicit trade in objects belonging to the cultural patrimony of nations, and one on the improvement of exchanges of information and establishment of databases. These recommendations will be made available for information, under the title "Charter of Courmayeur", at the eighth session of the Committee.

19. A member of the secretariat attended a conference in Athens on 26 and 27 November 1992, on current trends in the legal protection of the archaeological heritage, and contributed a paper on definition of the archaeological heritage. After discussion, the Executive Board considered that further time was necessary for consideration of the document. At its one hundred forty-first session in May 1993, the Executive Board decided to revert to the issue at its one hundred forty-second session (October 1993), with a view to making recommendations to the General Conference at its twenty-seventh session (October-November 1993).

III. STEPS TO CURB ILLICIT TRAFFIC IN CULTURAL PROPERTY

20. Since April 1991, four States - Angola, Grenada, Lebanon and Mongolia - have ratified or accepted the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. b/ Croatia and Slovenia notified their succession to the participation of Yugoslavia in the Convention. Tajikistan and Georgia notified their succession to the participation of the former Soviet Union in the Convention; and the Czech Republic and Slovakia succeeded to the participation of the former Czechoslovakia to the Convention. The number of States parties to this Convention is thus 78. Switzerland has announced that it is in favour in principle of participating in the Convention and will take legislative action to enable it to do so.

21. Since the last meeting of the Committee, the secretariat has continued to give support to States parties to the 1970 Convention. Two notices of stolen property have been issued for Turkey: one concerning the disappearance on 10 December 1990 of 34 antique coins, most of them gold, from the collection of antique coins of the Museum of Kayseri; and one on 17 April 1992 relating to the theft of 596 pieces of seventeenth-century Iznik ceramic tiles, removed and stolen from Bayrampasa Türbesi (Shrine) in the Haseki district in Istanbul in Istanbul on 22 June 1991. Two notices of stolen property have been issued for Greece: one relating to the theft of 64 priceless archaeological objects from the Museum of Kolona on the Island of Aegina; and one relating to the theft of 20 valuable marble and clay proto-Cycladic figurines and craters, which formed part of an important collection in the Archaeological Museum of Paros Island. UNESCO has issued a fifth notice concerning the theft of the head of a statue of the Boddhisattva Avalokitesvara, originating from the site of Thmar Pourk in Cambodia, which occurred on 24 February 1992.

22. In view of the serious increase in illicit traffic, UNESCO has adopted a programme of regional workshops on illicit traffic. From 24 to 28 February 1992, the Principal Regional Office for Asia and the Pacific of UNESCO in Bangkok organized, in cooperation with the SFAMO Regional Centre for Archaeology and Fine Arts (SPAFA) at Bangkok, a regional workshop at Jomtien,

Thailand, on the means of combating illicit traffic in cultural property. Participants from Bangladesh, Bhutan, Cambodia, China, Democratic People's Republic of Korea, India, the Islamic Republic of Iran, the Republic of Korea, the Republic of Mongolia, the Union of Myanmar, Nepal, Pakistan, Sri Lanka, Thailand and Australia were represented. Participants from the United States of America were present as observers, as well as representatives from ICPO-INTERPOL, the Customs Cooperation Council, ICOM, the United States Information Agency (USIA), and appropriate regional organizations. Participants were able to exchange their experiences, to discuss difficulties and common problems of illicit traffic, thefts, clandestine excavations, illicit export, the effect of tourism, and measures to curb these problems at national and international levels. A copy of the recommendations adopted at the meeting will be made available as a reference document at the eighth session of the Committee.

23. The Hungarian National Commission for UNESCO organized, on behalf of UNESCO, a regional seminar for Central Asian and Eastern European countries on illicit traffic in cultural property, which was held at Keszthely, Hungary, from 21 to 23 March 1993. Representatives of Albania, Azerbaijan, Bulgaria, Croatia, the Czech Republic, Estonia, Georgia, Kyrgyzstan, Moldova, Poland, the Russian Federation, Slovakia, Slovenia and Ukraine attended and experts from ICOM, ICPO-INTERPOL, the Getty Art History Information Program, and the Art Loss Register took part. A copy of the recommendations will be made available at the eighth session of the Committee.

24. ICOM is organizing, on behalf of UNESCO, a regional meeting for sub-Saharan Africa to be held at Arusha, United Republic of Tanzania, in September 1993. Representatives from Angola, Botswana, Lesotho, Malawi, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe will be invited. The programmes for such regional meetings include museum security, tracing, recuperation of cultural objects from other countries, reciprocal arrangements with other States, current measures of international collaboration for the retrieval of stolen objects and the control of export and trade.

25. For the first time, UNESCO has organized a national workshop on measures against illicit traffic in cultural property. This was held at Phnom Penh in July 1992 at the request of the Cambodian authorities. More than 100 participants discussed different items: legislation, security in museums and sites, police and customs measures, preparation of inventories, public information and education. Practical tracing was also provided in working groups animated by experts from different international and national organizations (ICOM, INTERPOL, etc.). Follow-up actions on the workshop have already been launched. Draft legislation concerning the protection of cultural property has been prepared by UNESCO, presented to the national authorities, and it was adopted in February 1993. Actions in the field of police training and public awareness have also been launched with the assistance of UNESCO.

26. There have been some noteworthy developments in the private sector which are likely to have important effects on the illicit traffic in cultural objects. The Art Loss Register, established by Lloyds of London, with the cooperation of the International Foundation for Art Research (IFAR) in New York, is a permanent computerized database on stolen art and enables the identification and recovery of stolen art prior to sale. The Register has agreed with UNESCO to offer to

east European States and certain others on the ICOM list of disadvantaged countries a certain number of free registrations of thefts so as to assist museums and others in these States to recover stolen objects. The existence of such a register is currently being taken into account in the text of the international agreement presently being negotiated by UNIDROIT with the support of UNESCO; failure to consult such a register where available would be detrimental to any claim for compensation for the return of an object which proved to have been stolen.

IV. PUBLIC INFORMATION

27. The secretariat has continued to publish at least one item on issues of restitution and return in the publication Museum. The UNESCO publication Sources, devoted a whole issue to the problem of illicit traffic in July-August 1991.

28. Shortly after the last meeting of the Committee, a German television programme dealt with the work of the Committee. The BBC World Radio has had a number of programmes on illicit traffic to which the secretariat contributed. Public awareness of the issue is higher than ever, as evidenced by the number of national and international meetings where it is discussed.

29. A non-governmental body in Switzerland, Die Erklärung von Bern (The Bern Declaration), published in April a book entitled Gräber, Götter, Geschäfte ("Graves, Gods and Business"), which publicizes the problem of illicit traffic for developing countries, with particular examples from Nepal, Peru and Ecuador. It emphasizes the important role of Switzerland in the trade. A member of the secretariat spoke on the role of UNESCO at a press conference in Zurich which launched the book. The Erklärung von Bern is continuing its efforts to ensure a consciousness on the part of the public of the harmful effects of illicit traffic in cultural objects on the heritage of source countries.

30. From 26 to 28 April 1991, a conference entitled "Museums and Galleries: Collecting, Funding and Protecting the Heritage" was attended at Ditchley, United Kingdom, by representatives from seven countries. Among other things, the participants considered the UNIDROIT Draft Convention and thought that, if applied, together with a reasonably liberal export regime for objects (which had been excavated and catalogued in an authorized and scientific manner), this would reduce the incentive for criminal activity.

31. On 18 May 1992, a conference opened in the Museum of London for the Heritage Coordination group, "Hold on to Your Heritage". Speakers included property owners who had had goods stolen and a representative from the Art Loss Register who called for a more effective register of stolen goods and joint operations with customs police stations and overseas police. The Police Art Squad claimed that only 5 per cent to 10 per cent of thefts are ever recovered.

32. The secretariat continued to provide information by answering requests for documents from journalists, specialists, associations and individuals wishing to know about the terms of reference and structures of the Committee or questions on illicit traffic. A major article was published in Time news-magazine of 25 November 1991 concerning illicit traffic, and newspaper coverage has

increased. The Art Newspaper, London, has published articles on UNIDROIT, on Angkor, on the illicit export of the "Icklingham treasure" from the United Kingdom to the United States and on the litigation in New York concerning the "Sevso Treasure". Major international newspapers in English, such as the International Herald Tribune, the Times, and the Washington Post, have made general analyses of the critical situation in the field of protection of the movable cultural heritage. The problem of restitution of cultural property was also mentioned - Time, in particular, relating to the request of Hungary to the Russian Federation for cultural treasures taken from Hungary during the Second World War. There have also been articles published on the theft of items from Kuwait and from provincial museums in Iraq in various newspapers, as well as on the drain on China's antiquities towards Western museums and collectors. The Economist, in one of its last issues, briefly described the plundering of antiques from the site of Angkor Wat in Cambodia and pointed out the measures being taken against it, mentioning UNESCO training courses in the region. Negotiations within the European Community for a directive to control illicit traffic in cultural objects within the European Community were widely reported. Interviews have been given by the secretariat to Agence France Presse (Phnom Penh), Radio France Internationale, Radio Monte-Carlo, and the Deutsche Welle, which set up a special television programme shown on 171 local channels in the United States of America. Articles were also published in La Croix (France), Libération (France), Bangkok Post (Thailand), Connaissance des Arts (France), The Guardian (United Kingdom) and Selection from the Reader's Digest.

Notes

a/ Since the date of the elections, which were held at the twenty-fifth and twenty-sixth sessions of the General Conference of UNESCO, the Intergovernmental Committee is composed of the following Member States: Angola, Australia, Belize, Cuba, Greece, Guatemala, India, Iraq, Italy, Libyan Arab Jamahiriya, Madagascar, Namibia, Nepal, Poland, Republic of Korea, Russian Federation,* Sierra Leone, Turkey, United Republic of Tanzania and Uruguay.

* By its letter of 26 December 1991, the Ministry of Foreign Affairs of the Russian Federation informed UNESCO of the succession of the Russian Federation to the rights and obligations of the Union of Soviet Socialist Republics.

b/ United Nations Educational, Scientific and Cultural Organization, Records of the General Conference, Sixteenth Session, vol. I, Resolutions, p. 135.